

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

**DIANE MARIE LOCHTEFELD,**

**Plaintiff,**

**v.**

**No. 17-cv-0653 SMV**

**NANCY A. BERRYHILL,<sup>1</sup>**

**Acting Commissioner of Social Security Administration,**

**Defendant**

**ORDER GRANTING PLAINTIFF'S MOTION**  
**FOR ATTORNEY FEES UNDER EAJA**

THIS MATTER is before the Court on Plaintiff's Motion for Attorney Fees under the Equal Access to Justice Act [Doc. 23], filed on December 19, 2017. Plaintiff requests attorney fees in the amount of \$9,388.40 and costs in the amount of \$400. Defendant filed no response, and the time for doing so has passed. Her failure to timely respond in opposition constitutes consent to grant the motion. *See* D.N.M.LR-Civ. 7.1(b). The Court, having considered the submissions of counsel, the record in this case, and the relevant law, and being otherwise fully advised in the premises, **FINDS** that the motion is well-taken and will be **GRANTED**.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for Attorney Fees under the Equal Access to Justice Act [Doc. 23] is **GRANTED**, and Plaintiff Diane Marie Lochtefeld is authorized to receive \$9,788.40 for payment to her attorney

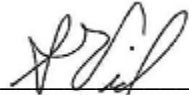
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<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill should be substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

for costs and services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

**IT IS FURTHER ORDERED** that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

**IT IS SO ORDERED.**

  
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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**  
**Presiding by Consent**